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No. 82-152

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

JOHNNIE TAYLOR HALL,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Before Petitioner's guilty plea was accepted, did the record reflect Petitioner's understanding of the privilege against self-incrimination, the consequences of the plea, and the nature of the charge?

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PRELIMINARY COMMENT

This Brief of Respondent in Opposition to Petition for Writ of Certiorari is filed pursuant to the request of this Court dated September 9, 1982.

OPINIONS BELOW

The Order of the Court of Appeals of Maryland of June 4, 1982, denying Petitioner's Petition for Writ of Certiorari

to the Court of Special Appeals of Maryland is appended to the Petition at A.9. The Opinion of the Court of Special Appeals of Maryland, Hall v. State, No. 937, Sept. Term, 1981 (Md. App., unreported per curiam opinion filed Feb. 26, 1982), is appended to the Petition at A.1 - A.8.

JURISDICTION

Petitioner has invoked the jurisdiction of this Court pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION AND RULE INVOLVED

United States Constitution:

[Amendment V]

[Rights of Accused in Criminal Proceedings]

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Maryland Rules of Procedure

Rule 731. Pleas.

c. Plea of Guilty.

The court may not accept a plea of guilty without first questioning the defendant on the record to determine that the plea is made voluntarily, with understanding of the nature of the charge and the consequences of the plea. The court may accept the plea of guilty even though the defendant does not admit that he is in fact guilty if the court is satisfied that there is a factual basis for the plea. If the court refuses to accept a plea of guilty, the court shall enter a plea of not guilty.

Rule 1085. Scope of Review -- Limited to Questions Decided by Lower Court

This Court will not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the lower court; but where a point or question of law was presented to the lower court and a decision of such point or question of law by this Court is necessary or desirable for the guidance of the lower court or to avoid the expense and delay of another appeal to this Court, such point or question of law may be decided by this Court even though not decided by the lower court. Where jurisdiction cannot be conferred on the Court by waiver or consent of the parties, a question as to the jurisdiction of the lower

court may be raised and decided in this Court whether or not raised and decided in the lower court.

STATEMENT OF THE CASE

On July 20, 1981, Johnnie Taylor Hall, Petitioner, in the Criminal Court of Baltimore, Maryland (Pines, J.), pleaded guilty to and was found guilty of driving while intoxicated. The pertinent portions of the transcript of the guilty plea hearing will be supplied in the Argument, infra. Petitioner was sentenced to one year imprisonment with all but 60 days suspended.

On direct appeal, Petitioner alleged that the hearing judge improperly accepted his guilty plea under Md. Rule 731c because Petitioner (1) did not understand the nature of the charge, (2) was not informed of the maximum sentence, and (3) was not informed of the waiver of his Fifth Amendment rights. Petitioner's conviction was affirmed by the Court of Special Appeals of Maryland. Hall v. State, No. 937, Sept. Term, 1981 (Md. App., unreported per curiam opinion filed Feb. 26, 1982) (Petition A.1 - A.8).

Petitioner's Petition for Writ of Certiorari, in which the same issues were

raised, was denied. Hall v. State, Pet. Dkt. No. 67, Sept. Term, 1982 (Md., Order by Murphy, C.J., filed June 4, 1982) (Petition A.9).

ARGUMENT

PETITIONER'S GUILTY PLEA WAS PROPERLY ACCEPTED WHERE THE RECORD REFLECTS HIS UNDERSTANDING OF THE PRIVILEGE AGAINST SELF-INCRIMINATION, THE CONSEQUENCES OF THE PLEA, AND THE NATURE OF THE CHARGE. THE STANDARDS SET FORTH BY THIS COURT DO NOT MANDATE AN EXPLANATION OF THE ELEMENTS OF THE CRIME BEFORE THE NATURE OF THE CHARGE CAN BE UNDERSTOOD, THE DECISIONS FROM SOME OTHER JURISDICTIONS NOTWITHSTANDING.

Maryland Rule 731c mandates that a hearing judge "may not accept a plea of guilty without first questioning the defendant on the record to determine that the plea is made voluntarily, with understanding of the nature of the charge and the consequences of the plea." Petitioner argues that, in view of the decisions of other jurisdictions requiring an on-the-record showing that a defendant must understand the privilege against self-incrimination, the nature of the charge, and the maximum possible sentence,

the hearing judge did not comply with this Court's decisions in Boykin v. Alabama, 395 U.S. 23 (1969), and Henderson v. Morgan, 426 U.S. 637 (1976), and thus inferably with Md. Rule 731c, before accepting Petitioner's guilty plea.

Petitioner's conclusion that the record does not reflect an understanding of the maximum sentence and the privilege against self-incrimination is incorrect. Nor did the Court of Special Appeals of Maryland misunderstand the requirements in holding that, under the facts of this case, the record was sufficient.

The State agreed that, in return for the guilty plea, it would recommend

> "one year, all but thirty weekends in the Baltimore City Jail suspended, a total of sixty days. After jail time is served the defendant is to be placed on supervised probation for a period of five years and the Department of Parole and Probation is to determine whether or not he needs further alcoholic treatment, counselling.
>
> When I say further, according to his attorney he has just completed a program given by the Motor Vehicle Administration. In addition to that, he will have to pay a fine of $250 as well as Court

> costs, and if the plea is accepted the State will nol pros the speeding charge."

Because the recommendation was accepted and no offer to withdraw the guilty plea was extended beforehand in the event that the recommendation would not be accepted, Petitioner was, in effect, informed and understood -- because he acknowledged understanding the bargain -- that the recommendation reflected the maximum exposure he could receive in exchange for the plea and that he would receive the contemplated benefit. See generally Bryant v. State, 47 Md. App. 551 (1981). Any assertion to the contrary was waived by Petitioner's failure to ask to withdraw his guilty plea or to be resentenced by a different judge. Barnhart v. State, 34 Md. App. 632, 634-35 (1977); Md. Rule 1085.

The hearing judge could also determine that Petitioner knowingly and voluntarily waived his Fifth Amendment rights where Petitioner acknowledged understanding the following statement:

> "You are also giving up the right to testify. If you were not to testify the Court or the jury, the finder of fact, would not infer you were guilty from the fact you did not testify."

This statement surely conveys the same information as the statement, "Do you understand that you have the right not to testify?"

Petitioner's argument is thus reduced to a contention that the record must reflect an explanation of the elements of the crime before the guilty plea could have been made with an understanding of the nature of the charge. While Respondent concedes that other jurisdictions have such a requirement, see State v. Priet, 289 Md. 267, 284-85 (1981), it is clear that such a requirement is not required by this Court.

> "Instead of testing the voluntariness of a plea by determining whether a ritualistic litany of the formal legal elements of an offense was read to the defendant, . . . the court should examine the totality of the circumstances and determine whether the substance of the charge, as opposed to its technical elements, was conveyed to the accused."

Henderson v. Morgan, 426 U.S. at 644.

This Court observed in Henderson v. Morgan, 426 U.S. at 647 n. 18, that "[t]here is no need in this case to decide whether notice of the true nature, or substance, of a charge always requires a description of every

element of the offense; we assume it does not." This assumption is inferably based on an earlier observation in McCarthy v. United States, 394 U.S. 459, 467 n. 20 (1969), that:

> "The nature of the inquiry required by Rule 11 must necessarily vary from case to case, and, therefore, we do not establish any general guidelines other than those expressed in the Rule itself . . . . In all such inquiries, '[m]atters of reality, and not mere ritual, should be controlling.' Kennedy v. United States, 397 F.2d 16, 17 (C.A. 6th Cir. 1968)."

In McCarthy, 394 U.S. at 467, this Court also held:

> "[I]n addition to directing the judge to inquire into the defendant's understanding of the nature of the charge and the consequences of his plea, Rule 11 also requires the judge to satisfy himself that there is a factual basis for the plea . . . . Requiring this examination of the relation between the law and the acts the defendant admits having committed is designed to 'protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.'" (Emphasis added.)

McCarthy thus makes clear that knowledge of

the elements of the crime charged, i.e., "the relation between the law and the acts the defendant admits having committed," is important only in determining whether there is a factual basis for the plea, an issue not present in this case, and not in determining whether a defendant understands the nature of the charge. To determine whether a defendant understood the nature of the charge, a case by case analysis of the totality of the circumstances, and not a recitation of elements, is mandated.

Thus, in Henderson v. Morgan, habeas corpus relief was granted where the record revealed that Morgan, possessing "unusually low mental capacity," was not informed by his attorney that intent was an element of second degree murder, the charge to which Morgan pled guilty though the indictment was couched in terms of first degree murder. 426 U.S. at 645-47. In Smith v. O'Grady, 312 U.S. 329 (1941), this Court held that Smith would be entitled to habeas corpus relief if he could prove his allegation that he, who had had no education or previous court experience, was, inter alia, denied appointment of counsel and a copy of the charge to which he was pleading guilty. Finally, in Kadwell v. United

States, 315 F.2d 667 (9th Cir. 1963), it was held that Kadwell's motion to withdraw a guilty plea was erroneously denied where

> "[a]ppointed counsel, apparently selected from those available in the courtroom at the time of arraignment, presumably had no prior knowledge of appellant, of the charge against him, or of the legal and factual issues involved. The period of consultation and opportunity for deliberation were brief at best. Appellant was not informed by the court of either the nature of the accusation or the consequences of his plea. Appellant asserts that he in fact lacked that knowledge. . . ." 315 F.2d at 671.

Unlike the blatantly deplorable situations in Henderson v. Morgan, Smith v. O'Grady, and Kadwell, the totality of the circumstances reveals that Petitioner understood the nature of the charge to which he pled guilty such that the guilty plea was voluntarily entered. Petitioner was 52 years old, had a ninth-grade education, and was literate. He was represented by counsel at the hearing. Petitioner acknowledged understanding the charge against him -- indeed a simple charge whose name states all the elements -- and the bargain struck with the State wherein the charge to which the plea was entered was set forth. See

generally State v. Priet, 289 Md. at 288.

The hearing judge thus complied with the standards set forth by this Court before accepting Petitioner's guilty plea.

CONCLUSION

For the foregoing reasons, review of the Question Presented is not within the contemplation of Sup. Ct. R. 17.1, and Respondent thus prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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